

N2M1DONS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 192 (JSR)

5 ANDREW DONE,

6 Defendant.

Sentencing

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7  
8 New York, N.Y.  
9 February 22, 2023  
12:06 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the  
Southern District of New York

16 BY: DOMINIC A. GENTILE, ESQ.

JAMES A. LIGTENBERG, ESQ.

17 Assistant United States Attorneys

18 DIAZ & MOSKOWITZ PLLC

Attorneys for Defendant

19 BY: JOHN DIAZ, ESQ.

20 LAW OFFICE OF MARK S. DeMARCO

Attorneys for Defendant

21 BY: MARK S. DeMARCO, ESQ.

22 ALSO PRESENT: WILLIAM COLEMAN, Paralegal Specialist, USAO  
23 DAGOBERTO ORRANTIA, Interpreter (Spanish)  
ERIKA DE LOS RIOS, Interpreter (Spanish)

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(Case called)

THE DEPUTY CLERK: Will everyone please be seated and will the parties please identify themselves for the record.

MR. GENTILE: Good afternoon, your Honor. Dominic Gentile and James Ligtenberg for the United States. Seated at counsel table with us is Mr. Will Coleman, a paralegal with the U.S. Attorney's Office.

THE COURT: I think the term of art is "paralegal specialist."

MR. GENTILE: My mistake, your Honor.

I would also like to note for the Court that Ms. Lexie Barreiro, the sister of the victim, is present in the audience as well.

MR. DIAZ: Good afternoon, your Honor. John Diaz and Mark DeMarco present for defendant Andrew Done, who is seated to my right, your Honor.

THE COURT: Please be seated.

All right. We're here for sentencing. The first item of business is to calculate the sentencing guidelines, which are not binding on the Court but which the Court is required to calculate. And the probation office says the total offense level is 43, criminal history category II; therefore, a guideline of life imprisonment. Any disagreement by the government?

MR. GENTILE: No, your Honor.

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1 THE COURT: Any disagreement by the defense?

2 MR. DIAZ: No, your Honor.

3 THE COURT: So I will adopt that calculation and adopt  
4 the presentence report.

5 And you've gone over the presentence report with your  
6 client, yes?

7 MR. DIAZ: Yes, your Honor.

8 THE COURT: Very good.

9 All right. So now let's turn to what is more  
10 important, which is where the defendant should be sentenced  
11 pursuant to Section 3553 of Title 18 of the United States Code.

12 So let me hear first from defense counsel, then from  
13 government counsel, and then from the defendant, if he wishes  
14 to be heard.

15 MR. DIAZ: Thank you, your Honor.

16 Your Honor, firstly, Mr. Cohen is extremely apologetic  
17 for his actions, for his role in this conduct, and is  
18 specifically and particularly apologetic to the family of Angel  
19 Barreiro, and he would like Angel Barreiro's family to know  
20 that he is truly remorseful. And I also, your Honor, would  
21 like to extend my deepest sympathy to Mr. Barreiro's family.

22 Your Honor, Andrew Done is a young man who was in his  
23 late teens at the time that this conspiracy began. He has an  
24 IQ of just 60, and has been suffering from schizophrenia since  
25 he was a child. Andrew understands, your Honor, that he

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1 committed a terrible crime and that he must be punished for it,  
2 and I submit that he took the important first step in his quest  
3 for redemption by pleading guilty in this case and accepting  
4 responsibility. The defense team submitted a very detailed  
5 submission with exhibits for the Court's consideration, and we  
6 did our best to provide the Court with as much information as  
7 we could and tried to provide some type of context to the Court  
8 for how we got here today.

9 THE COURT: That was very helpful, and I appreciate  
10 your submission.

11 MR. DIAZ: Thank you, your Honor.

12 And with that said, Judge, I'm not going to rehash all  
13 of those facts here on the record. But I do want to highlight  
14 a few factors that I think are most relevant in the Court's  
15 determination under 3553(a).

16 First, your Honor, as I mentioned, Andrew was a mere  
17 teenager when this conspiracy began. I believe the entire  
18 conspiracy encompassed a couple of years, and Andrew had just  
19 barely reached adulthood when this terrible murder was  
20 committed. And I know that the Court is aware of the studies  
21 that have been done showing the late development of the brain,  
22 part of the brain responsible for judgment and impulse control,  
23 and when we combine this, your Honor, with poverty, with  
24 neglect, with abuse, with schizophrenia, and an IQ of 60, I  
25 submit that we had certain conditions in place, your Honor,

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1 that kind of brought us to where we are today.

2 In preparing for this, your Honor, my daughter came up  
3 to me recently and asked for some help on her English class.  
4 She was reading *The Outsiders*, and I just — I found it so  
5 appropriate that she was reading that book. And I remembered  
6 also the other companion book by S.E. Hinton, *Rumble Fish*. And  
7 you know, I'm helping her, trying to, you know, come up with  
8 her assignment on the concepts of the book, and I thought about  
9 this case, your Honor, and I thought about the similarities  
10 that those young men encountered in 1950s Tulsa, Oklahoma, and  
11 what the young men were encountering in the Bronx in the year  
12 2020, and how the presence of certain conditions in our  
13 community continue to lead to the same outcomes for so many  
14 young men. And whether it's the Shooting Boys, the Trinitarios  
15 Sunset, the Bloods, or the Greasers, all these young men are  
16 lost in the same maze, with mentors and positive role models in  
17 short supply.

18 In addition, your Honor, I ask the Court to consider  
19 Andrew's mental illness and disability. As we stated, Judge,  
20 he was diagnosed with schizophrenia at a young age. He was  
21 subjected to excessive corporal punishment, given unprescribed  
22 psychotropic medication, and was even subjected to electroshock  
23 therapy as a child. He has experienced mental health episodes  
24 requiring hospitalization and has had failed suicide attempts.  
25 Andrew began having hallucinations at the age of 11, and has

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1 had inconsistent mental health treatment since 2016. He spent  
2 his formative years being shuffled around between the Dominican  
3 Republic and the Bronx, on almost a yearly basis. His  
4 education records reflect a young man who his teachers  
5 described as kind and polite but yet could not mask his  
6 struggles in school. At the age of 14, Andrew was performing  
7 at a second-grade level. He felt deep shame in being placed in  
8 special education classes, suffered constant bullying which  
9 resulted in him being the victim of several assaults. All  
10 these factors combined contributed to him dropping out of  
11 school. And once he was out of school, he lost the last bit of  
12 structure that he had in his life. He began hanging out with  
13 his older brother, who coincidentally is sitting in Rikers  
14 Island awaiting trial on an unrelated murder case. Andrew  
15 began using street drugs and hanging out with kids in the  
16 neighborhood. The entire offense, Judge, encompassed, again,  
17 just several years, from when he was a late teen to him  
18 reaching adulthood.

19 I think it's noteworthy to note, your Honor, that  
20 since his incarceration, the MDC medical staff has done their  
21 own evaluation on Andrew and he's under the care of a  
22 psychiatrist now. He continues to feel deep remorse over the  
23 killing of Mr. Barreiro and has spent time at MDC under suicide  
24 watch. He's currently seeing a psychiatrist every 15 days, and  
25 he's taking three separate psychotropic medications, including

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1 Risperdal, which is a known medication to treat schizophrenia.  
2 Since he's been under constant treatment and care at the MDC,  
3 he has participated in every single program that was available  
4 to him, earning numerous certificates, and we submitted those  
5 to the Court. He's the father of a young son who's currently  
6 living in a New York City shelter with his girlfriend,  
7 Ms. Henriquez, and she's here in court along with his mother  
8 and his family. And these are the people that are going to  
9 serve as his support network upon his eventual release from  
10 prison.

11 As a result of his age, he doesn't have a lengthy work  
12 history, Judge, but he has worked. He has worked in  
13 construction, and he aspires to be a long-distance truck  
14 driver, Judge, particularly because he says he can be alone.

15 In closing, your Honor, I want to reiterate my  
16 remorse, Andrew's remorse to Mr. Barreiro's family, and I ask  
17 the Court to consider a sentence of 15 years as being  
18 appropriate but not more than necessary to accomplish the goals  
19 set forth in 3553(a).

20 And finally, your Honor, these arguments are not  
21 exhaustive, and we would rely on our submission.

22 THE COURT: Thank you very much.

23 Let me hear from the government.

24 MR. GENTILE: Thank you, your Honor.

25 Before I begin my remarks, Judge, I just wanted to

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1 note for the Court that Ms. Barreiro would like to address the  
2 Court.

3 THE COURT: We'll hear from her right after you.

4 MR. GENTILE: Okay. Thank you, Judge.

5 As your Honor has heard time and time again throughout  
6 this case, the Shooting Boys gang were a violent crew of young  
7 men who terrorized various neighborhoods in the Bronx. Andrew  
8 Done is the leader of that violent crew, and he's not only the  
9 leader, he's solely responsible for its creation. The name the  
10 Shooting Boys didn't come about by mistake. The defendant gave  
11 the gang that name, and he made sure that gang lived up to its  
12 name. All or most of the violent conduct that the Court has  
13 heard about in this case, a vast majority of the narcotics  
14 distribution the Court has heard about in this case, a vast  
15 majority of the robberies, the despicable conduct that the  
16 Court has heard about in this case, can in some way, shape, or  
17 form be traced back to this defendant. And to be clear, Judge,  
18 this defendant wasn't a — didn't just sit back and give orders  
19 to other gang members, although that was part of his role. He  
20 was a hands-on leader. He picked up a gun and, time and time  
21 again, he used that gun to settle scores with gang rivals. In  
22 June of 2019, when a rival drug dealer refused to comply with  
23 his directive to remove an article of clothing the defendant  
24 found offensive, the defendant's default response was to shoot  
25 at him. Only two weeks later, the defendant rallied his



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1 henchmen and went looking for someone to shoot, for the only —  
2 for the no other reason than to lay claim that he shot at a  
3 rival gang member. And when the defendant and his cohorts  
4 found two individuals he believed were gang members, he shot  
5 them both. And I say believed, Judge, because there is really  
6 no evidence that the two people he shot were actually members  
7 of a rival gang or any gang whatsoever.

8 A year later, the defendant planned, organized, and  
9 executed a home invasion robbery in New Jersey. In the dead of  
10 night, the defendant and several of his gang members, including  
11 several of his co-defendants, broke into a home at night where  
12 there were two families residing. One of the families had  
13 small children. When the defendant broke in, he tied up one of  
14 the male occupants, a male he believed to be a drug dealer. He  
15 pistol whipped that individual until that individual gave up  
16 where he was hiding his drugs. The defendant and his  
17 co-defendants and cohorts stole the drugs, stole money, and  
18 stole two vehicles from the residence of that house.

19 But the defendant's penchant for violence, your Honor,  
20 escalated and culminated on November 5th of 2020, when the  
21 defendant shot and killed Angel Barreiro. And that entire  
22 incident was captured on security camera video. And with the  
23 Court's permission, we'd like to show a clip of that video for  
24 the Court so that the Court could see firsthand the callous and  
25 unprovoked nature of that act.

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1 THE COURT: Sure.

2 MR. GENTILE: If I could just set up the scene for the  
3 Court. What we're looking at here is a security camera video  
4 over 1365 Cromwell Avenue. The black car that is parked  
5 perpendicular to the street in the apron, driveway apron there,  
6 is the victim's car, a black Acura. The victim is sitting in  
7 the driver's seat of that car. At the top left of the screen,  
8 you'll shortly see the defendant's blue Dodge Charger turn onto  
9 the block from West 170th Street. The car will stop, park, the  
10 defendant will get out of the car, engage with people in this  
11 RV, and then he'll engage with the victim.

12 (Video played)

13 MR. GENTILE: Your Honor, Angel Barreiro was sitting  
14 in his car the entire — during the entire encounter he had  
15 with the defendant. Nothing, nothing the victim did during  
16 that episode justified being shot multiple times by Andrew  
17 Done. There was no aggression, no movement towards the  
18 defendant; no weapons were found on the victim, no weapons were  
19 found in his car. He was shot in cold blood, defenseless.

20 The defendant's attempt to convince the Court in his  
21 submission that he shot Barreiro because Barreiro had  
22 previously shot at him or slashed him is nothing more than a  
23 desperate and bald-faced attempt at blame shifting, and the  
24 Court should reject it out of hand. There was no evidence of  
25 anything of that nature, and as we've represented to the Court,

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1 on multiple occasions, the government has spoken with a number  
2 of people that are close with the defendant, that know why the  
3 defendant did this; not one of them told us about any prior  
4 attempts on the defendant's life that were made by Barreiro.

5 One of the other reasons we wanted to show the Court  
6 the video was to highlight the defendant's willful and  
7 deliberate actions here. The defendant wasn't just trying to  
8 scare the victim. He wasn't even just trying to injure the  
9 victim. He was trying to kill the victim. And we know that  
10 because after the defendant had shot the victim from the  
11 passenger side of the vehicle, he calmly walked around to the  
12 other side and shot him again.

13 Of all the egregious conduct the Court has heard about  
14 in this case, the defendant's is by far the worst. The taking  
15 of a human life in such a cold and calculating manner deserves  
16 the most serious punishment the Court can mete out.

17 With respect to defense counsel's reference to the  
18 defendant's mental capacity, the defendant had the mental  
19 capacity to commit all of these crimes, he had the mental  
20 acuity to order all of these other gang members to commit all  
21 of their crimes, and he had the mental acuity to flee after  
22 this murder to the Dominican Republic. He wasn't apprehended  
23 until the United States Marshals apprehended him in the  
24 Dominican Republic and brought him back to the United States.

25 For all of these reasons, your Honor, the government

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1 respectfully requests that the Court impose a significant  
2 sentence of imprisonment, one in the upper range of the  
3 guidelines and at the very least of 35 years, Judge. Thank  
4 you.

5 THE COURT: Thank you very much.

6 I'll hear from the sister of the victim.

7 MR. GENTILE: Ms. Barreiro has requested to make her  
8 statement in Spanish, Judge, and to use the interpreter.

9 THE COURT: Yes.

10 MS. BARREIRO: (Through interpretation and in English)  
11 Hello. Good afternoon.

12 Good afternoon to the judge and to the jury. And my  
13 name is Lexie Barreiro. I'm Angel Barreiro's sister, okay?  
14 Let me tell you a little bit about my brother. We arrived here  
15 seven years ago. We were all okay until my brother met certain  
16 friends. He was doing very well in school until he met those  
17 friends. So to keep my story short, he never slept out of the  
18 home. He was a good boy — responsible, educated, studious,  
19 sportsman. We have trophies and medals ever since the time we  
20 came to this country.

21 I came here to say that it is not fair what he is  
22 saying, that he has a mental problem. He has a mental problem  
23 now, after he killed my brother? Before that he didn't have no  
24 problem, right? And his woman, she live in a shelter now?  
25 Because in 2020, when he killed my brother, she wasn't there.

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1 Because I'm in a shelter, I know everything that happens. And  
2 she was outside in the summer, and you cannot be outside — if  
3 you're in a shelter, you cannot be outside after 9, right? So  
4 now she's in a shelter, she go to the shelter to help him with  
5 this, not because she need that, right? That's the first  
6 thing.

7 I can speak English but I want to talk in Spanish.

8 The second thing is, two years ago — well, a year and  
9 a half ago, my brother tried to keep away from all of those bad  
10 friendships, because he had a little daughter who was 2 years  
11 old. He moved to Connecticut to make a radical change in his  
12 life. And I'm not saying anything that is not true because his  
13 wife is there. She's right there. We live with the mother of  
14 his wife, his siblings, and his daughter. My mom's not here.  
15 I have to tell you that my mother cannot do anything at all  
16 after my brother was killed. She doesn't eat, she's always in  
17 the hospital, she's always getting blood transfusions. She's  
18 always getting IVs.

19 My brother was only 20 years old. There is no reason  
20 for him to have been murdered. On the night before, the day  
21 before he murdered my brother, he had an argument with the best  
22 friend of my brother. My brother defended him. That's what  
23 the whole borough says. My brother argued with this little  
24 young man who's sitting here. And he was with other people.  
25 Maybe they was not in the car, but all of these people knew

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1 what he was going to do. Yes. Because they made up a song,  
2 saying each one of the words on each line many times, they shot  
3 him, what car he was in, the color of the car, right? And I  
4 don't know if they were saying, but there were quite a few  
5 people who wrote to me for me to tell my dad to leave things  
6 alone, that what happens on the street stays on the street. I  
7 didn't want to come here because I have a 2-year-old daughter,  
8 and because I feel that something will happen because I'm here.  
9 Yeah. And I don't care 'cause that's my brother. I'm not  
10 scared. Right? He was a human, you know? He was not an  
11 animal, not an animal. He was not a person who mistreated  
12 anyone. He was a good son. A good brother. He always  
13 defending these people. My brother is dead right now because  
14 he was defending a friend of his. The last words out of my  
15 brother's head to this young man who's sitting here was, what  
16 happens with "enano" is with me. You feel me? Like it's -- I  
17 don't agree with him getting 15 years. Why? He did not kill  
18 an animal. He didn't kill a bird. He killed a man who was 20  
19 years old, who had a future, who was helping his daughter. He  
20 left a wife with a 2-year-old child alone.

21 And then he says something else that I am leaving out.  
22 Three days after he killed my brother — because he did kill my  
23 brother — I gave birth. And she's there, right? My daughter  
24 is 2 years. She didn't know my brother. And she is exactly  
25 like my brother. She's exactly like my brother. She got his

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1 attitude, his color, everything, and she don't know my brother.  
2 She is not gonna see him. I'm not gonna see him no more 'cause  
3 he's not here. 'Cause he killed my brother. Right?

4 And that's not enough; 15 years is not enough. He  
5 said he's got a problem now, right? He has problems now, after  
6 he murdered him? Well, that's great. It's not only him but  
7 his people, the Shooting Boys, have threatened me through the  
8 social networks for me to not be here. That's one. For me to  
9 stop posting photos of my brother asking for justice. I pay my  
10 bills; you feel me? And that's stupid. I'm sorry for that  
11 word. There are companions of his who are outside who knew  
12 what he was going to do, for the simple reason that the way  
13 they threatened me, they knew information about what he did.  
14 And they posted too because they do that every little while. I  
15 have had to block several people and they write again. And  
16 they write to me again. My daughter was born three days later  
17 because one of them called me, threatening me. And my giving  
18 birth was before time — and I have proof of that — because  
19 they called me and asked me, oh, stop talking. Don't call no  
20 police. What happens on the street stays on the street.  
21 That's the phrase they use. I have nothing else to say. I  
22 just like to say something to you, the judge. Please deal with  
23 this. He did not murder an animal. He was a person. And my  
24 father is not here. It's just my sister-in-law and me and my  
25 daughter. My mother is in Santo Domingo awaiting the

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1 sentencing.

2 We don't agree at all with him getting 15 years. As a  
3 minimum he deserves 40. And I hope he doesn't get some sort of  
4 device so that he can stay at home. My daughter is going to be  
5 with me. She has nothing to do with that. But the dad is a  
6 murderer. And it's true. A lot of proof.

7 One other thing. Before this case he had other cases,  
8 did he not? Did he have this mental problem that he has now,  
9 with those other cases?

10 THE COURT: So Ms. Barreiro, I fully understand what  
11 you're saying, but I think we need to move to the sentence.  
12 Thank you very much.

13 All right. So unless defense counsel had anything  
14 else he wanted to say, we'll hear from the defendant, if he  
15 wishes to be heard.

16 THE DEFENDANT: Good afternoon, your Honor.

17 I would like to apologize to the relative of Angel  
18 Barreiro for this tragedy that I committed. I would also like  
19 to apologize to the Court and to your Honor for this tragedy  
20 that I have committed. I would like to be able to bring him  
21 back to life or have him stand once again before his family, so  
22 that he could give his children opportunities and a good  
23 education.

24 I also would have liked his mother to be present here  
25 today so that I could ask for her forgiveness. I also want to



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1 ask forgiveness of his sister for this tragedy.

2 THE COURT: All right. Thank you very much.

3 So let me start with the most obvious point, which is,  
4 from the standpoint of every single factor that Congress asks  
5 the Court to consider in Section 3553, almost all of them weigh  
6 heavily in distinguishing a murder from almost any other  
7 wrongful activity. A murder must be punished. It must be  
8 punished severely, if we call ourselves civilized people. It  
9 is the most fundamental axiom of society that murder can never  
10 be tolerated. And therefore, a sentence considerably more than  
11 15 years must be imposed in this case.

12 You have seen both in this case and in many other  
13 cases, the tragedies to all concerned that arise from terrible  
14 upbringings, from the influence of gangs, and the entire  
15 complex of actors that bring people who might have led decent  
16 lives to become people who prey on others. Those are not  
17 irrelevant, but it's a question of degree. I also think it's  
18 relevant that young people don't have the same impulse control  
19 as older people, that people with a low IQ don't have the same  
20 control as more intelligent people. And all of those factors  
21 weighed to a limited extent — they convince the Court that the  
22 Court should not totally write off this defendant by giving him  
23 a life sentence. Because he is not without hope of redemption.  
24 But that is a relatively minor factor in this case. Everything  
25 that this defendant did suggests such a disregard for the most

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1 elementary rules of civilized behavior that the only reasonable  
2 response is to say he must be punished and punished hard, if  
3 society and its rules and the basic precepts of civilization  
4 mean anything.

5 So weighing all those factors and all the factors  
6 under Section 3553, I think a sentence of 35 years is the right  
7 sentence. So 420 months. So the sentence of 35 years will be  
8 imposed, to be followed by five years of supervised release on  
9 terms I'll get to in a moment.

10 No fine will be imposed.

11 And I take it the government is not seeking forfeiture  
12 here?

13 MR. GENTILE: We are not, Judge.

14 THE COURT: There is a \$100 mandatory special  
15 assessment that must be paid.

16 The terms of supervised release are:

17 First, the mandatory conditions that the defendant  
18 will not commit any other federal, state, or local crime;

19 That he will not unlawfully possess a controlled  
20 substance;

21 That he will, upon his release from prison, submit to  
22 one drug test within 15 days, to be followed by at least two  
23 periodic drug tests thereafter;

24 That he will cooperate in the collection of DNA.

25 There will also be imposed the standard conditions of

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1 supervision 1 through 12. They appear on the face of the  
2 judgment and also will be gone over with the defendant by the  
3 probation officer when the defendant reports to begin his  
4 period of supervised release.

5 And finally, there are the special conditions:

6 The defendant will participate in an outpatient drug  
7 and alcohol program under standard terms and conditions;

8 The defendant will provide the probation officer with  
9 access to any requested financial information;

10 The defendant will participate in an outpatient mental  
11 health treatment program under standard terms and conditions;

12 And that the defendant will not associate with or  
13 interact in any way, including through social media websites,  
14 with any gang members or associates, especially of the Shooting  
15 Boys gang, and

16 That the defendant will be supervised by the district  
17 of his residence.

18 Now before I advise the defendant of his right of  
19 appeal, is there anything else that either counsel needs to  
20 raise with the Court? Anything from the government?

21 MR. GENTILE: Yes, your Honor. The government moves  
22 to dismiss all open counts.

23 THE COURT: That motion is granted.

24 MR. DIAZ: No objection to that motion, Judge.

25 THE COURT: So does defense counsel have any

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1 recommendation that it wishes the Court to make with respect to  
2 location of imprisonment?

3 MR. DIAZ: Yes, your Honor. If the Court can  
4 recommend to BOP that he be housed as close to New York City as  
5 possible so that he can be near his family, your Honor.

6 THE COURT: I will certainly recommend that. I can't  
7 order it, but I will recommend it.

8 All right. Mr. Done, you have a right to appeal this  
9 sentence. Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: And if you can't afford counsel for the  
12 appeal, the Court will appoint one for you free of charge. Do  
13 you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Very good. That concludes the proceeding.

16 THE DEPUTY CLERK: All rise.

17 o0o